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State v. Guilford Appellant's Brief Dckt. 45059

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45059
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR 2016-8353
v.)	
)	
AARON ZACHARY GUILFORD,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Aaron Zachary Guilford appeals from his judgment of conviction for lewd conduct with a minor under the age of sixteen. Mr. Guilford was found guilty following a jury trial and the district court imposed a unified sentence of ten years, with three years fixed. Mr. Guilford now appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On May 2, 2016, fourteen-year-old K.K. told his mother that he had been the victim of a sex offense involving Mr. Guilford. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) Mr. Guilford was later interviewed and then charged with one count of lewd conduct with a minor under the age of sixteen. (PSI, p.3; R. Vol. I, p.54.) Mr. Guilford was found guilty following a jury trial and the district court imposed a unified sentence of ten years, with three years fixed. (R. Vol II, pp.1, 14.) Mr. Guilford appealed. (R. Vol. II, p.17.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of ten years, with three years fixed, upon Mr. Guilford following his conviction for lewd conduct with a minor under the age of sixteen?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Three Years Fixed, Upon Mr. Guilford Following His Conviction For Lewd Conduct With A Minor Under The Age Of Sixteen

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Guilford’s sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Guilford “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Mr. Guilford acknowledged his role in the instant offense. He told the presentence investigator that on the day in question he took K.K. to the Falls Park in Post Falls and was teaching him various Eastern religious practices. (PSI, p.3.) He asked K.K. to take his shirt off and began massaging him. (PSI, p.3.) Mr. Guilford acknowledged that he took the massage too far and touched K.K.’s penis. (PSI, p.3.) When asked how he felt about committing the instant offense, Mr. Guilford stated, “horrible, I shouldn’t [have] put myself in the position in the first place.”

This case represents Mr. Guilford’s first criminal conviction of any kind. (PSI, p.4.) Further, Mr. Guilford has the support of his family. His father testified at the sentencing hearing and stated that if Mr. Guilford was out of custody, he could live at his residence. (Sent. Tr., p.8, Ls.21-25.) There would not be alcohol at the house, and his father would allow Mr. Guilford’s probation officer in the house to do probation checks. (Sent. Tr., p.9, L.19 – p.10, L.6.) Mr. Guilford’s father would do what he could to ensure that Mr. Guilford was accountable while on probation. (Sent. Tr., p.10, Ls.7-10.)

Pastor Craig Rice also testified at the sentencing hearing and stated that he had visited Mr. Guilford several time while he was in custody. (Sent. Tr., p.13, Ls.16-24.) He stated that Mr. Guilford would be permitted to return to his church and that he had been praying for Mr. Guilford and his family. (Sent. Tr., p.15, Ls.4-19.) Pastor Rice was willing to provide “chaperone, sponsorships, helping, you know, spiritual counseling. Anything that we can do, you know, to help him and to, you know, see the community is a better place for all that.” (Sent. Tr., p.16, Ls.10-15.)

Jaelynn Anderson also testified and stated that she was supportive of Mr. Guilford and would be able to provide him transportation if he needed it. (Sent. Tr., p.19, Ls.3-15.) She also had resources through a family member to help Mr. Guilford find employment. (Sent. Tr., p.19, Ls.12-15.) She had also recently become engaged to Mr. Guilford. (Sent. Tr., p.20, Ls.20-24.)

Finally, Mr. Guilford addressed the district court. He stated,

I would like to say I’m sorry and remorseful for what I’ve done to both myself, the impact this has been on the victim’s family and my family as well. I can’t begin to imagine what the victim’s family has been through, but I am heavily sorry for it.

I would just like to say that I am willing to do any treatment that is required in the community. I want to get back to making myself a better person. I want to do my life the right way, going to church, having my pastor help me, my family support me. I would have much more success with being on a probationary period with my family supporting me, my friends supporting me, and my church. I’m just – I’m asking for a second chance to prove myself, that I’m more than willing to do so if I’m given the chance.

(Sent Tr., p.57, L.17 – p.58, L.6.)

Counsel emphasized to the court that Mr. Guilford had acknowledged what happened in this case and was ready and willing to have treatment and counseling. (Sent. Tr., p.47, Ls.15-20.) Counsel requested that the court place Mr. Guilford on probation considering the testimony elicited at the hearing: Mr. Guilford had the support of his family, of Ms. Anderson, and of

Pastor Rice and his church. (Sent. Tr., p.48, Ls.2-11.) Mr. Guilford's family was willing to hold him accountable and make sure he complied with the requirements of probation. Ms. Anderson was willing to provide transportation and assist Mr. Guilford with finding employment. Further, this was Mr. Guilford's first criminal conviction. Considering all of these factors, Mr. Guilford respectfully submits that the district court abused its discretion by imposing a unified sentence of ten years, with three years fixed.

CONCLUSION

Mr. Guilford respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 1st day of December, 2017.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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CYNTHIA KC MEYER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas